

Whitson, Keith Edward

From: Sheean, Christopher [sheean@wildman.com]

Sent: Thursday, March 20, 2008 1:07 PM

To: Whitson, Keith Edward

Subject: IKE audit

Keith,

While you may disagree, the language of the settlement agreement ultimately controls. On the audit of the source code of VEO's rating program, the agreement specifically requires that VEO make the SOURCE CODE for its rating program available for review. Nowhere in the agreement does it mention or contemplate that Mr. Bradwell would have access to a computer with the rating program loaded on it. Likewise, it does not provide or require that VEO make an engineer of your choosing available to answer questions. Nor does the agreement require that the audit occur on VEO's premises.

VEO will not agree to allowing Mr. Bradwell, Mr. Gloekler, or any other person designated by IKE to have access to VEO's facility, any more than IKE would want a VEO designee to visit its manufacturing facility. Moreover, there is no need to conduct the audit at VEO's facility. All that VEO is obligated to provide is a printout of its source code, and drawings demonstrating that VEO has implemented the design changes agreed to in the settlement. VEO insisted in negotiations for the settlement that the audit occur in Tulsa so that it could oversee the review and insure that its controlled copies are not mishandled or reproduced.

We are confident that the Court will interpret the agreement as it is written, and not add in new or additional terms not agreed to by the parties.

We are hopeful that IKE will reconsider its position and agree to the audit as delineated in the settlement agreement.

Chris

Christopher T. Sheean

Wildman Harrold Allen & Dixon LLP

225 W. Wacker Drive

Suite 2800

Chicago, Illinois 60606

T: (312) 201-2997

F: (312) 416-4659

sheean@wildman.com

-----Original Message-----

From: Whitson, Keith Edward [mailto:KWhitson@Schnader.com]

Sent: Thursday, March 20, 2008 10:34 AM

To: Sheean, Christopher

Subject: RE: VEO/Coale: RE: IKE audit

Chris,

We disagree.

First, it was always contemplated by the parties that the audits would be conducted on-site. Indeed, if the audit simply consisted of reviewing copies of documents, there would be no need to travel to a hotel room in Tulsa. That review could be conducted anywhere.

4/2/2008

EXHIBIT "A"

Secondly, a proper audit necessarily requires more than a review of printouts. It also requires the performance of calculations to test whether the KPSC source code is utilized in those calculations, and to ensure that the program audited is the same program that VEO uses for its Voyager calculations. Otherwise, VEO could simply provide printouts of a dummy program that it does not use for Voyager projects. To properly audit the source code used by VEO, Mr. Bradwell must see the program run and compare it to the printouts and other documents. We need more than Mr. White's availability to answer questions; we need an engineer knowledgeable in the system to actually run calculations in the program.

We will have Mr. Bradwell and Mr. Gloekler sign affidavits attesting to confidentiality.

I understand you are doing what your client believes is best, but the parties agreed to an audit, not just a review of printouts. We are confident the Court would not limit IKE's audit rights to a review of printouts in a hotel room.

Keith

Keith E. Whitson
Schnader Harrison Segal & Lewis LLP
2700 Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222
(412) 577-5220
facsimile: (412) 577-5190

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From: Sheean, Christopher [mailto:sheean@wildman.com]
Sent: Wednesday, March 19, 2008 5:31 PM
To: Whitson, Keith Edward
Subject: RE: VEO/Coale: RE: IKE audit

Keith,

The substitution of Mr. Gloekler for Mr. Siebel is acceptable to VEO.

VEO will not agree to an on-site audit. The settlement agreement does not require or provide for such an audit. In fact, it states that the audit will occur in Tulsa. VEO is located in Collinsville, OK.

The audit of VEO's computer program is provided for in paragraph 1(J), and states that IKE, "at its expense, may have Neil Bradwell audit VEO's source code for its rating software for the Voyager to confirm that it does not copy or utilize the KPSC source code." The agreement contemplates a review of the source code, and nothing more. VEO will not agree to provide a computer with the software installed that is fully functional. Mark White will be available by telephone to answer any questions, but the agreement only contemplates a review of the source code.

As for the drawings, a set of drawings showing all of the design changes required by paragraph 1(D) and the design prohibition provided in paragraph 1(F) will be provided for Mr. Gloekler's review. Mark White will

4/2/2008

be available to answer any questions.

VEO requests that Mr. Gloekler and Mr. Bradwell sign affidavits indicating that they will maintain the information they review as confidential, and specifically, that they will not share the findings of their review with anyone, including IKE representatives, other than to report claimed violations of the settlement agreement.

Please advise me at your earliest opportunity of where IKE would like the print out of the source code and the design change drawings sent in the Tulsa area on April 2d.

I understand that you are doing what is best for your client, just as I am. However, the terms of the settlement and the final signed settlement agreement were heavily negotiated. VEO has complied with its obligations under the agreement, but does not want to broaden the scope of its provisions at this stage.

Chris

Christopher T. Sheean

Wildman Harrold Allen & Dixon LLP

225 W. Wacker Drive

Suite 2800

Chicago, Illinois 60606

T: (312) 201-2997

F: (312) 416-4659

sheean@wildman.com

-----Original Message-----

From: Whitson, Keith Edward [mailto:KWhitson@Schnader.com]

Sent: Wednesday, March 19, 2008 12:49 PM

To: Sheean, Christopher

Subject: RE: VEO/Coale: RE: IKE audit

Chris,

IKE will plan on conducting the audit on April 2 and 3. While I imagine that they will be able to complete the audit in one day, we are leaving the 3rd open in case the review takes longer than anticipated. As a result of this date change, IKE has to replace Bob Seibel with Bill Gloekler. Mr. Gloekler is a former Zurn employee.

I am advised by Mr. Gloekler and Mr. Bradwell that an audit off-premises is simply not feasible. In particular, I am advised that in order to do a proper audit, Mr. Bradwell needs to see not just printouts of the source code itself, but the program function as well. This requires a computer with the software installed and fully functional. The computer must have the source code installed so that all logic and data files used in the operation of the program are readily accessible. An engineer knowledgeable in the development and maintenance of the program needs to be available so that Mr. Bradwell may see the program run and to locate particular key sections of the software. Further, comparison of the Voyager source codes with IKE's source codes may reveal other documents that are necessary in order to do a proper audit. We need to have someone who Mr. Gloekler or Mr. Bradwell can communicate with if they have any such questions or feel the need to review any additional documents other than what is initially provided.

These individuals will agree to keep such inquiries to a minimum so as not to interfere with VEO's daily business activities. But this information is a necessary component of the audit. Per the Settlement Agreement, Mr. Bradwell and Mr. Gloekler will agree to confidentiality of the review.

Keith

4/2/2008

Keith E. Whitson
Schnader Harrison Segal & Lewis LLP
2700 Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222
(412) 577-5220
facsimile: (412) 577-5190

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Whitson, Keith Edward

From: Sheean, Christopher [sheean@wildman.com]
Sent: Friday, March 14, 2008 5:57 PM
To: Whitson, Keith Edward
Subject: VEO/Coale: RE: IKE audit

Keith,

I have spoken with my client, and can respond to your request. VEO is not available on 3/25 or 26. VEO will be able to make the drawings and source code available to Mr. Seibel and Mr. Bradwell to review on April 2, 3, or any day the week of April 7. If those dates do not work, we can discuss dates later in the month. VEO will make controlled copies of the drawings and source code available for review at any location in Tulsa or Owasso of IKE's choosing, other than VEO. There is a Best Western and a Holiday Inn Express in Owasso that are convenient and inexpensive. It is our understanding of the settlement agreement that the audit is a review. As such, VEO must insist that the controlled copies be returned, and that no attempt be made to copy them.

Please let me know when your client would like to proceed with the audit.

Chris

Christopher T. Sheean
Wildman Harrold Allen & Dixon LLP
225 W. Wacker Drive
Suite 2800
Chicago, Illinois 60606
T: (312) 201-2997
F: (312) 416-4659
sheean@wildman.com

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From: Whitson, Keith Edward [mailto:KWhitson@Schnader.com]
Sent: Friday, March 14, 2008 3:52 PM
To: Sheean, Christopher
Subject: RE: IKE audit

Chris,

We sent the 3 week notice some time ago so that VEO would have plenty of time to get the materials together. We have arranged for Bob Seibel and Neil Bradwell to visit Tulsa on March 25 and 26 in order to conduct the audit. Per the Agreement, Mr. Seibel will examine the documents and Mr. Bradwell will evaluate the source codes. Because this audit involves review of the codes, we imagine that the audit must occur onsite. In any event, we believe it is appropriate for the document review to be onsite so that if Mr. Seibel determines that additional documents need to be reviewed, he can request those at that time, and not have to return on another occasion. Please confirm.

Keith

Keith E. Whitson
Schnader Harrison Segal & Lewis LLP
2700 Fifth Avenue Place
120 Fifth Avenue

4/2/2008

Pittsburgh, PA 15222
(412) 577-5220
facsimile: (412) 577-5190

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From: Sheean, Christopher [mailto:sheean@wildman.com]
Sent: Friday, March 14, 2008 4:37 PM
To: Whitson, Keith Edward
Subject: RE: IKE audit

Keith,

Today is my first day back in the office after a 2 week trial, so I apologize for the delay in responding. Please coordinate the audit through me. To go forward, we'll need a date, the name of the third party auditor that IKE wishes to use, and the location in Tulsa where the drawings should be sent. VEO is very busy currently, so I will have to insist on the full 3 week lead time.

Please let me know if you have any questions.

Chris

Christopher T. Sheean
Wildman Harrold Allen & Dixon LLP
225 W. Wacker Drive
Suite 2800
Chicago, Illinois 60606
T: (312) 201-2997
F: (312) 416-4659
sheean@wildman.com

-----Original Message-----

From: Whitson, Keith Edward [mailto:KWhitson@Schnader.com]
Sent: Friday, March 14, 2008 3:25 PM
To: Sheean, Christopher
Subject: IKE audit

Chris,

Hope all is well with you. I left you a voicemail message yesterday about the fact that Indeck Keystone Energy, LLC wishes to execute its right for an audit under the May 2007 Settlement Agreement. We earlier provided notice of this audit to Mr. Viskup, per the terms of the Agreement, but I wanted to know whether I should schedule the audit directly with Mr. Viskup or through you. Happy to do it either way, but I didn't want to contact Mr. Viskup directly without checking with you. Thanks.

Keith

4/2/2008

Keith E. Whitson
Schnader Harrison Segal & Lewis LLP
2700 Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222
(412) 577-5220
facsimile: (412) 577-5190

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